

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

DOUGLAS BERSAW,)
Plaintiff,)
v.) Case No.: 1:15-cv-00390-JL
CAVALRY PORTFOLIO SERVICES LLC)
and ALFRED BROTHERS,)
Defendant.)

)

**CAVALRY PORTFOLIO SERVICES LLC'S
ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT**

Defendant, Cavalry Portfolio Services, LLC ("Defendant"), by and through its undersigned attorneys, hereby answers Plaintiff's Verified Complaint as follows:

INTRODUCTION

Defendant denies any and all parts of Plaintiff's introduction that allege any wrongdoing by Defendant, including, but not limited to, alleged violations of the federal Telephone Consumer Protection Act ("TCPA") and alleged violations of New Hampshire statutes, RSA 359-E and RSA 358-A.

PRELIMINARY STATEMENT

1. The allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies any allegations of wrongdoing.
2. The allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, they are denied. Defendant lacks sufficient

knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this Paragraph.

3. The allegations of this paragraph are a legal conclusion to which no response is required.

To the extent a response is deemed required, they are denied.

4. The allegations of this paragraph are a legal conclusion to which no response is required.

To the extent a response is deemed required, they are denied.

JURISDICTION AND VENUE

5. Defendant admits that this Court has jurisdiction of the claims asserted by Plaintiff.

6. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this Paragraph.

7. The allegations of this paragraph are a legal conclusion to which no response is required.

To the extent a response is deemed required, they are denied.

PARTIES

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this Paragraph.

9. Defendant admits the location of its principal place of business and the name and address of its registered agent. Defendant denies all other allegations.

FACTUAL ALLEGATIONS

10. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that Plaintiff has in his possession recordings of messages allegedly left by Defendant. The remaining allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, they are denied.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of what is meant by “established business relationship.” To the extent that “established business relationship” refers to “established business relationship” under 47 C.F.R. § 64.1200(a)(2)(iv), the allegation is a legal conclusion to which no response is required. Whether Plaintiff has given Defendant his “permission” to call Plaintiff’s telephone under the federal Telephone Consumer Protection Act (“TCPA”) and New Hampshire statutes, RSA 359-E and RSA 358-A is a question of law to which no response is required.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that Plaintiff’s phone number is listed on the Do Not Call List. Defendant denies making any telephone call to Plaintiff for the purpose of marketing goods or services or for telemarketing purposes and denies all allegations to the contrary.

COUNT I
VIOLATIONS OF THE TELEPHONE COMMUNICATIONS ACT 47 U.S.C. § 227

13. Defendant restates and incorporates by reference its answers and responses to Paragraphs 1 through 12 as though set forth herein.

14. The allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, they are denied.

15. The allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, they are denied.

16. The allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, they are denied.

17. The allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, they are denied.

WHEREFORE, Defendant denies any and all alleged liability in this matter, requests that judgment be entered in its favor and against Plaintiff, with costs and attorneys' fees assessed, and requests that this Court grant such further and additional relief as it deems just and appropriate.

COUNT II
VIOLATIONS OF THE TELEPHONE COMMUNICATIONS ACT 47 U.S.C. §
227(c)(5)

19. [sic] Defendant restates and incorporates by reference its answers and responses to Paragraphs 1 through 17 as though set forth herein.

20. The allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, they are denied.

21. The allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, they are denied.

WHEREFORE, Defendant denies any and all alleged liability in this matter, requests that judgment be entered in its favor and against Plaintiff, with costs and attorneys' fees assessed, and requests that this Court grant such further and additional relief as it deems just and appropriate.

COUNT III
VIOLATIONS OF THE NEW HAMPSHIRE TELEMARKETING ACT RSA 359-E
BY DEFENDANT CALVARY

22. Defendant restates and incorporates by reference its answers and responses to Paragraphs 1 through 21 as though set forth herein.

23. The allegations of this paragraph are a legal conclusion to which no response is required. To the extent a response is deemed required, they are denied.

24. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this Paragraph.

25. The allegations of this paragraph are legal conclusions to which no response is required.

To the extent a response is deemed required, they are denied.

26. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of what is meant by “established business relationship.” To the extent that “established business relationship” refers to “established business relationship” under 47 C.F.R. § 64.1200(a)(2)(iv), the allegation is a legal conclusion to which no response is required. Whether Plaintiff has given Defendant his “permission” to call Plaintiff’s telephone under the federal Telephone Consumer Protection Act (“TCPA”) and New Hampshire statutes, RSA 359-E and RSA 358-A is a question of law to which a response is not required.

WHEREFORE, Defendant denies any and all alleged liability in this matter, requests that judgment be entered in its favor and against Plaintiff, with costs and attorneys’ fees assessed, and requests that this Court grant such further and additional relief as it deems just and appropriate.

COUNT IV
VIOLATION OF NEW HAMPSHIRE CONSUMER PROTECTION ACT RSA 358-A:2 BY DEFENDANT CAVALRY

27. Defendant restates and incorporates by reference its answers and responses to Paragraphs 1 through 26 as though set forth herein.

28. Denied.

29. The allegations of this paragraph are a legal conclusion to which no response is required.

WHEREFORE, Defendant denies any and all alleged liability in this matter, requests that judgment be entered in its favor and against Plaintiff, with costs and attorneys’ fees assessed, and requests that this Court grant such further and additional relief as it deems just and appropriate.

DEMAND FOR JURY TRIAL

No response is required.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff suffered no actual damages as a result of Defendant's alleged conduct.

THIRD AFFIRMATIVE DEFENSE

If discovery reveals that any debt identified in Plaintiff's Complaint is subject to an agreement requiring the parties to submit any dispute between them to arbitration, there is no subject matter jurisdiction over Plaintiff's Complaint.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims alleging Defendant violated RSA 359-E and/or RSA 358-A:2 are pre-empted in whole or in part by federal law.

FIFTH AFFIRMATIVE DEFENSE

In the event it is determined that any telephone call placed by defendant required the prior express consent of the called party, Defendant had obtained such consent or acted under a good faith belief that such consent had been provided to it.

Respectfully submitted,

Cavalry Portfolios Services LLC
By their attorney

/s/ Jay Niederman

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November 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2015, this document was filed in accordance with the Court's Electronic Filing Guidelines and will be sent to all parties by operation of the Court's electronic filing system.

/s/ Jay Niederman